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June 30, 2010

Judith A. Enck
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Re: GE's Modeling Results for Upper and Lower Hudson River

Dear Regional Administrator Enck:

I appreciated the opportunity to meet with you last week. During that meeting, we discussed GE's willingness to move forward to implement the right remedy for the Hudson River. As you recall, we spent a significant amount of time discussing GE's updated model. We also agreed that we would raise critical issues regarding this project as soon as they arise. We have once such issue now.

Consistent with our discussion, earlier this week, on June 28, 2010, GE sent two documents to the peer review contractor for the Hudson River project, SRA. One document was the full model documentation report, which the Peer Review Panel had requested during peer review and which GE had provided earlier in summary form. The second document, "Proposed Allowable Downstream PCB Load for the Hudson River Dredging Project," provides the results of GE's ongoing modeling efforts, along with GE's proposed load standard for the Upper and Lower Hudson River derived from that modeling. That document was the final stage in the process that GE had fully described to the Panel at the May peer review meeting, and that we said would be completed by the end of June.

As has been standard practice, we asked SRA to forward the documents to the Peer Review Panel. However, we have been advised by your staff that they are directing SRA to withhold this information from the Panel. The justification appears to be their unilateral declaration that the peer review record is now closed, even though the fact is that EPA and GE are providing information to the Panel on an ongoing basis.

EPA must not prevent this critical information from being forwarded to the Panel. The question of the potential impacts of dredging, and the resuspension standards that should apply to Phase 2, go to the heart of the Panel's charge. As you and I discussed, GE undertook to update the PCB fate and bioaccumulation model for the Upper Hudson River – when EPA did not – to make sure that the Panel has the best information based on a state-of-the-art model to support its work. Developing, calibrating, and running the model is a time-intensive effort, and we applied all available resources to complete the task as quickly as possible, and within the time frame that we advised EPA and the Panel we would complete our work.

June 30, 2010

Page 2

At the May peer review meeting, we openly discussed with the Panel GE's plans to complete the modeling runs and provide proposed updated load standards by late June. We were transparent in our plans and the fact that we could not transmit these results any earlier, due to the time it takes to run the appropriate scenarios and the fact that critical data was not even available until early this year. We explained the model and our approach to the Panel, provided them documentation of the model, and answered their questions. We explained that – based on the same model – the load standard should be no more than 1200 kg Total PCBs, but that the number would have to be adjusted downward to take account of re-deposition. In short, the Panel already has GE's evaluation derived from this same model, and has every reason to expect that it will be receiving this additional information.

Your staff has expressed concern that these submissions come too late in the process and could delay the peer review process. We think those concerns are overstated and in any event would undercut the important work of the Panel. The fact is that the original peer review schedule has been modified many times along the way, including at the Panel's request. For its part, EPA delivered its "Addendum" – really, a new Phase 1 Evaluation Report – on the weekend before the May peer review meeting; and EPA presented its final proposed resuspension standard (which differed from the standard in its Addendum) on the final day of the peer review, after the public's opportunity to present to the Panel. The peer review proceedings themselves were reshaped at the Panel's request. Beyond that, the Panel has been active in soliciting and receiving new information. The Panel clearly does not share the view that the peer review record is now "closed," and as recently as last week, we and EPA continued to receive questions and requests for information from the Panel. EPA has not objected to any of the Panel's post-meeting requests, nor has it tried, until now, to shut down the flow of critical information. Ultimately it is up to the Panel, not EPA, to decide how best to use this important information in its ongoing evaluation of the charge questions and in the time available to the Panel.

EPA and GE have examined the Upper Hudson River for decades, to determine the best and most protective remedy for the river. An independent peer review process is integral to that evaluation. Concerns over timing notwithstanding, the Hudson Consent Decree provides that the Panel "shall be provided a reasonable and adequate time to conduct the Peer Review." The critical decisions regarding the future course of this project must be based on sound science using the best analytical tools available. The Peer Review Panel has demonstrated that it is competent to manage its evaluation, and it is arbitrary for EPA to step in now to unilaterally direct the contents of the peer review record in the name of wooden adherence to a schedule that in fact has been flexible.

Valuable days have already been lost due to the direction to block the submission of this information to the Panel. We urge you to promptly reconsider EPA's position and allow SRA to provide this important information to the Panel immediately. We ask for your decision by the end of the day on Thursday, July 1.

Sincerely,

A handwritten signature in black ink, appearing to read "ARKL". The letters are stylized and connected, with a long horizontal line extending from the end of the signature.

Ann R. Klee